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SUPREME COURT, U. S.

No. 738

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IN THE SUPREME COURT OF THE UNITED STATES

October Term 1968

ADKINS TRANSFER COMPANY, INC.,
ADKINS CARGO EXPRESS, INC., and
TENNESSEE CARTAGE COMPANY, INC.,
Appellants,

vs.

HAROLD DORNBOS and BEVERLY DORNBOS,
Individually and d/b/a H. J. DORNBOS
& BRO., a Co-Partnership

and

THE KROGER COMPANY and
ROOKS TRANSFER LINES, INC.,
Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

MOTIONS TO DISMISS AND AFFIRM

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Appellees, HAROLD DORNBOS and BEVERLY DORNBOS, Individually and d/b/a H. J. DORNBOS & BRO., pursuant to United States Supreme Court Rule 16, hereby move the Court for an order dismissing the purported appeal on the grounds that the order appealed from is not a final judgment within the meaning of 28 U.S.C. §1257 and that no substantial constitutional questions are presented.

In the alternative, Appellees move the Court for affirmance of the order appealed from on the grounds that the decision of the trial court, confirmed by the Michigan Court of Appeals and the Supreme Court of Michigan, is manifestly correct and does not require further consideration by this Court.

STATEMENT OF THE CASE

Appellees accept the Statement of the Case in Appellants' Jurisdictional Statement, with the following important amplifications:

1. *The Complaint.* The alleged negligence of Adkins Transfer Company, Inc., is not limited to the transportation and delivery of the smoked whitefish chubs but includes particularly negligence in the handling and protection of the shipment and communication of information incident to its transportation.

Similar allegations of negligence are made against Tennessee Cartage Company, Inc.

2. *Affidavits in Opposition to Motions to Quash.* Appellees filed three affidavits and three depositions, which have the force of affidavits, in opposition to the motions to quash. The parties are in dispute as to the timeliness and admissibility of these affidavits. The trial court deemed the information in the affidavits unnecessary to its decision on the motions and did not rule on their admissibility. None of the parties have waived their positions with respect to this question, but in view of the status of the matter, no discussion of the information contained in the affidavits has been presented to either of the Michigan appellate courts and none will be set forth herein.

3. *Interrogatories and Request for Admissions.* Prior to the decision by the trial court on the motions to quash, Appellees served Interrogatories upon Adkins Cargo Express, Inc., Adkins Transfer Company, Inc., and Tennessee Cartage Company and requested admissions from Adkins

Transfer Company, Inc., pursuant to applicable Michigan General Court Rules. No objections were made and responses were filed. Among the facts revealed by the sworn answers to these pleadings were the following:

(a) Adkins Transfer Company, Inc., now Adkins Cargo Express, Inc., is the wholly owned subsidiary of Gateway Transportation Company, Inc., a common carrier which operates in Michigan.

(b) Adkins Transfer Company, Inc., had concurrences for through rates with common carriers operating in Michigan in 1963.

(c) Adkins Transfer Company, Inc., was a party to a general equipment interchange agreement with all major motor carriers in the area in 1963.

(d) Adkins Transfer Company, Inc., declined to give details of the operating revenues derived from its transportation of lading shipped from or destined to points in Michigan in 1963 on the grounds that determination of the answer would be impractical and financially prohibitive.

(e) Adkins Transfer Company, Inc., declined to give details of the carriers with which it interlined lading shipped from or destined to Michigan in 1963 for the reason specified in (d) above. It did, however, state that it handled shipments which either originated in or were destined to Michigan in 1963.

(f) Adkins Transfer Company, Inc., declined to state in pounds or as a percentage of its total lading the amount it transported in 1963 which was shipped from or destined to points in Michigan for the reasons specified in (d) above.

(g) During 1963, Adkins Transfer Company, Inc., did interchange trailers with other carriers and thereby transport trailers which had been loaded in whole or in part in Michigan. Also, this equipment was interchanged with numerous carriers which were authorized to operate in Michigan.

(h) The very same truck of Adkins Transfer Company, Inc., which transported the shipment of smoked whitefish chubs described in the Complaint from Chicago to Nashville, Tennessee, was also carrying a 14,000 pound shipment of a chemical product from the Dow Chemical Company in Midland, Michigan, to Nashville, Tennessee.

(i) It is the position of the Tennessee Cartage Company, one of the Appellants herein, that it was acting as the agent of Adkins Transfer Company, Inc., in delivering the smoked whitefish chubs in question to the Kroger warehouse in Nashville, Tennessee. Tennessee Cartage Company, Inc., operates both as a common carrier in interstate commerce and as a local carrier in the City of Nashville, Tennessee.

STATEMENT OF QUESTIONS PRESENTED

The questions presented for consideration by the Court in this appeal, when deprived of argumentative elements and phrased in view of the facts and the legal precedents are as follows:

1. Is the exercise of judicial jurisdiction over Appellants, limited to a cause of action arising out of the activity which connects them with the State of Michigan and which resulted in the causing of tortious consequences in Michigan, compatible with due process of law under the United States Constitution?

2. Does the exercise of judicial jurisdiction over Appellants, limited to a cause of action arising out of the activity which connects them with the State of Michigan and which resulted in the causing of tortious consequences in that state, result in an unreasonable and oppressive burden on interstate commerce?

The Judgment of the Supreme Court of Michigan is not final.

Appellees concede the arguments and authorities contained in the Jurisdictional Statment to the effect that the requirement of finality under 28 U.S.C. §1257 is not entirely mechanical and arbitrary. Appellees further concede that in the absence of review by this Court, Appellants will be required to defend at a trial on the merits.

Appellees emphasize, however, that the judgment of the Supreme Court of Michigan was "without prejudice." (Appendix C, Jurisdictional Statement). The question there involved may be raised again on a further appeal. The Michigan Court has merely determined, under the facts and arguments presented, that constitutional jurisdiction over the Appellants is so probable that it is not unfair or unjust to require them to proceed to trial. This decision was undoubtedly also made in view of the desirability of orderly, complete judicial proceedings, rather than piecemeal decisions, and the potential harm to Appellees in further delay.

Still another factor is relevant. There is pending and preserved the question of admissibility of additional affidavits and depositions deemed unnecessary to the decision by the trial court. Reversal of the trial court's order can only result in resolution of this issue and further appeals on the matter of jurisdiction. The information in question will be presented at trial and will obviate the necessity for further interlocutory proceedings related to its present admissibility.

For these reasons it is respectfully requested that the Court consider the matter of finality at the outset in this case and make such determination thereon as it deems just and consistent with the statutory policy in view of the circumstances presented.

CONSTITUTIONAL ARGUMENTS ARE NOT SUBSTANTIAL

A. The exercise of judicial jurisdiction over appellants herein is manifestly compatible with due process of law under the United States Constitution.

The statement of the question presented with respect to due process of law set forth on page 4 above, intentionally emphasizes the limited judicial jurisdiction asserted in this case. Aside from quotation of the applicable Michigan Statute on page 3 of the Jurisdictional Statement, Appellants ignore, as they have done in all previous proceedings in this case, this highly essential element. Jurisdiction here is, under the terms of the applicable statute, carefully limited to the single cause of action in tort resulting from acts by the Appellants which have caused tortious consequences to occur within Michigan. The relation between the scope of the jurisdiction sought and the facts and circumstances under which it is sought is essential to a determination of questions of due process.

The impact of *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), upon subsequent jurisdictional concepts is well known. The most important feature of that case is the predicate laid therein for distinction between an exercise of general *in personam* jurisdiction and *in personam* jurisdiction limited to a cause of action arising out of a relation with the forum state. In analyzing earlier cases, this Court pointed out that they included (1) those upholding jurisdiction where the activities of the foreign corporation were continuous and systematic and the cause of action arose therefrom, (2) cases denying jurisdiction where the activity was isolated or casual and the cause of action was unrelated to them, and (3) cases upholding jurisdiction on the basis of sufficient activities even though the cause of action was entirely distinct from those activities. See discussion at 326 U.S. 310, 317-318. Concluding the analysis, the Court observed:

> "It is evident that the criteria by which we mark the boundary line between those activities which justify

> the subjection of a corporation to suit, and those which do not, cannot be simply mechanical or quantative. The test is not whether the activity, which the corporation has seen fit to procure through its agents in another state, is a little more or a little less. Whether due process is satisfied must depend rather upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure." 326 U.S. 310 at 319.

In so doing, the Court expressed a flexible standard which recognizes the minimal significance of state lines in modern intercourse among the states. Moreover, emphasis was placed upon the nature and quality rather than the quantity of the defendant's activities and the relation of the cause of action to those acts.

The standard set forth in *International Shoe* has been consistently followed in subsequent decisions by this Court and is the basis for the recent revision of jurisdictional statutes in most states, including Michigan. Acting under the principles set forth in *International Shoe*, the new state statutes have distinguished between activities which are constitutionally sufficient for an exercise of general jurisdiction and those activities, described in the so-called "long-arm statutes," which are sufficient only for a limited exercise of jurisdiction.

Jurisdiction has not been sought or upheld in this case under the statutory criteria for general jurisdiction but rather under the single-purpose, limited jurisdiction authorized in subsection 2 of the following Michigan Statute, M.S.A. §27A.715:

> "The existence of any of the following relationships between a corporation or its agent and the state shall constitute a sufficient basis of jurisdiction to enable the courts of record of this state to exercise limited personal jurisdiction over such corporation and to enable such courts to render personal judgment against such corporation arising out of the act or acts which create any of the following relationships:

(1) The transaction of any business within the state.

(2) The doing or causing any act to be done, or consequences to occur, in the state resulting in an action for tort.

(3) The ownership, use, or possession of any real or tangible personal property situated within the state.

(4) Contracting to insure any person, property or risk located within this state at the time of contracting.

(5) Entering into a contract for services to be performed or for materials to be furnished in the state by the defendant."

As in other states, the Michigan Revised Judicature Act, which includes the foregoing statute, was adopted only after thorough study and research by a joint committee consisting of judges, lawyers, professors and legislators. The effect with respect to the jurisdiction of Michigan Courts was clearly designed to authorize jurisdiction compatible with the economic trends and contemporary adjustment of concepts of due process that had occurred in the preceding fifteen years. Sofar as is relevant here, M.S.A., Section 27A.715(2) contemplates personal judicial jurisdiction over a non-resident foreign corporation which causes the occurrence in this state of consequences resulting in an action for tort, but the authorized jurisdiction is strictly confined to causes of action which arise out of that relationship to the state.

This Court in *International Shoe* noted a trend of expanding the permissible scope of state jurisdiction over foreign corporations attributable to the fundamental transformation of our national economy over the years. Today, the trend is far more clear. It illustrates dramatically that due process cannot arbitrarily confine state court authority within boundary lines which no longer have significance in the world of commerce. Due process does not require

such an artificial limitation under the flexible standard established in *International Shoe*:

> "More recently in International Shoe Co. v. State of Washington, 326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. 95, the court decided that 'due process requires only that in order to subject a defendant to a judgment *in personam,* if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice." ' " *McGee v. International Life Insurance Co.,* 355 U.S. 220 at 222-223 (1957).

What then are the contacts of these appellants with this state?

Each of them accepted and undertook the responsibility of participating in the transportation of clearly marked, perishable foodstuffs from the point of origin at Appellees' place of business to the destination in Nashville, Tennessee. Each was a participant in an unbroken movement of commerce from Michigan to Tennessee. This was done in the ordinary course of their regular business and was undertaken for profit. An integral part of the responsibility that accompanied this opportunity for profit was the duty to exercise reasonable care to avoid injury in connection therewith. Each of them breached this responsibility and committed actionable negligence. The results are common knowledge. Numerous deaths and illnesses occurred, there was wide publicity and Appellees and their industry generally suffered extensive injuries in Michigan. The perishable food products were shipped by Appellees from Michigan under a bill of lading so indicating, and serious tortious consequences occurred in Michigan as the result of the specific negligence of these Appellants with respect to this particular shipment. Therefore, this cause of action and the acts of these Appellants bear a substantial relation to the State of Michigan.

This is not a case in which Appellees' residence stands alone as the only connection with the forum. It is a case of destruction of a long-established, Michigan business, with consequent effects upon its resident owners. It arises

out of and is limited to the handling of Appellees' Michigan products by Appellants.

In addition to the transportation and handling of Appellees' products in this instance, Appellant Adkins Transfer Company has other and additional contacts with Michigan. As a common carrier on major north-south routes in the Central United States, it was, and is, a connecting carrier in many shipments of goods to and from the State of Michigan. The same Adkins' trailer which carried the shipment of fish in question from Chicago to Nashville also contained a large load of a chemical product enroute from Midland, Michigan, to Nashville.

Adkins had concurrences for through rates with other carriers operating in Michigan. These are agreements to haul lading as a connecting carrier on a total rate which is less than the sum of the standard rates of the participating carriers for their respective legs of the journey. They are evidenced in the published tariffs, and they alone are solicitation of Michigan business. Adkins also interchanged trailer equipment with other carriers operating in Michigan and thereby transported trailers loaded in whole or in part in Michigan. The specific shipment, then, was only part of Adkins' general participation in the flow of goods to and from the State of Michigan. Tennessee Cartage Company, on the other hand, was similarly involved with respect to shipments to Kroger in Nashville, Tennessee, and by its own admission herein, was the agent of Adkins.

Under the decisions of this Court, the contacts with the foreign state arising out of a single transaction are sufficient to satisfy the requirements of due process if they are reasonably related to the state and if the jurisdiction is sufficiently limited. The additional contacts between Adkins and the State of Michigan strengthen the conclusion that the limited jurisdiction sought herein is compatible with due process of law.

Appellants argue, on pages 15 and 16 of the Jurisdictional Statement, that they have not invoked any benefit or protection from the laws of the State of Michigan. It is true that their operating authority, narrowly viewed, does not include the State of Michigan. However, it is apparent from even the small factual detail set forth in this record

that Appellant Adkins at least is significantly involved with the commercial and economic activities in the State of Michigan. Along with a limited number of other business entities, it is the only company authorized and permitted to carry lading moving between the State of Michigan and certain other portions of the United States. Undoubtedly, if such became necessary under appropriate circumstances, both of these Appellants would rely upon the laws of the State of Michigan, and indeed, even the Michigan judicial system, for enforcement of their right to be paid and to earn profits by reason of this activity. Perhaps they have not been required to invoke the benefits and protections of the laws of Michigan in the past, but there can be no doubt that they operate in view of these benefits and protections and with the comfortable knowledge that they can be availed of if and when that becomes necessary. Such opportunity carries with it the duty to answer to others who are equally protected and benefited by such laws.

The Appellants similarly argue that they were required to carry the lading in question. They urge this fact to absolve them from accounting in Michigan to Michigan residents upon whom they have, by their negligence, inflicted tortious consequences in Michigan. The argument standing alone is without realistic force. Moreover, it ignores the fact that these Appellants are actively engaged in this enterprise for a profit. They solicit, through published tariffs and rate and equipment agreements, the business of carrying commerce destined to and from the State of Michigan. They undoubtedly seek the broadest authority with respect to the type of goods that they can carry. They could easily limit their responsibility in this case by yielding their authority to carry perishable foodstuffs, or even smoked fish.

Appellants concede the principles expressed in *International Shoe* and *McGee v. International Life Insurance Co.* They tout certain language in the contemporary case, *Hanson v. Denckla*, 357 U.S. 235 (1958), as a requirement of tangible, physical activity within the state. An examination of both the facts of *McGee* and *Hanson*, however, reveals that each is a proper application of the "minimum

contacts'' principles upon their respective facts, and that the causing of tangible consequences under these circumstances is sufficient for limited jurisdiction.

In *Hanson*, the defendant trustee was not only a foreign corporation, but it had no contacts whatsoever with the forum, Florida. So far as the record discloses, it made no effort to and did not, even outside Florida, perform services for citizens of that state. Its only connection was as trustee of a trust created by someone who subsequently moved to Florida. The issue was the validity of the trust agreement. Considering the nature and quality of the transaction sued on, the *Hanson* decision is not inconsistent or even incompatible with the general concepts enunciated earlier by this Court or with the exercise of jurisdiction in this case. Nevertheless, four Justices strongly dissented from the majority opinion on the grounds that even the facts of *Hanson* did not offend due process. 357 U.S. 256-264. The dissents stressed that due process is not a mechanical territorial limitation on the powers of the states but rather the guarantee of a fair and adequate opportunity to be heard.

The Appellants, of course, would confine the *McGee* decision to cases involving insurance contracts. Clearly, the principles of *McGee* are broader. They are equally applicable to this case, in which the jurisdiction is carefully limited to a single cause of action arising out of the causing of tortious consequences in the State of Michigan. Under the principles of the cases decided by this Court, these contacts are sufficient to uphold the limited jurisdiction in question.

Hanson is not inconsistent with *McGee*. On close analysis the decisions bear striking evidence of the validity of the principles of limited jurisdiction involved here. *McGee* by reason of a special state statute actually involved limited *in personam* jurisdiction. *Hanson* more closely approximated principles of unlimited jurisdiction. Both support the result reached by the Michigan Courts in this case.

Appellants, nevertheless, assert that the trial court applied the principles incorrectly, but as the trial court said in its opinion:

> "These defendants are in the business of carrying goods in interstate commerce. It is reasonable to assume that they solicit and hopefully anticipate such business. They are in the position of being able to protect themselves from the consequences of their own derelictions. They understand that the nature of their business requires them to have the care and custody of the products and possessions of residents of other states. It is foreseeable that their negligent handling of these products and possessions may have tortious consequences in other states."

Considerations of traditional fairness and substantial justice, as directed in *International Shoe,* verify the conclusion. This action seeks to make whole, so far as they ever can be, residents of Michigan who have been injured here by the negligence of the Appellants. Notions of fairness and justice are subjective, and it would appear manifestly fair to require them to answer for the wrongs they have committed where the consequences occurred. The equities are even more patent when it is again noted that the jurisdiction over them is expressly limited to the action arising out of those consequences. The justice is particularly apparent when, as here, the economic ability and well-being of Appellees has been largely destroyed by the acts of the Appellants. It would seem no more unfair, in view of modern communications and transportation, to subject them to suit in Michigan where the wrong occurred than, for example, in Illinois for Adkins or Kentucky for Tennessee Cartage, where they concede amenability to suit. The State of Michigan has a proper interest in affording a forum for redress of wrongs to its citizens and has expressed that interest in the Revised Judicature Act.

Most significant, however, is the fact that Michigan is the only forum in which Appellees can join all of the defendants named herein in one action. The only alternative is the expensive burden of multiple actions and the attendant risk of inconsistent verdicts.

> "It would thus appear that the meaning of due process in this context can be determined only by judicial

> evaluation of the competing interests, namely those of a defendant in not being called upon to defend in that forum, those of the plaintiff in being able to acquire jurisdiction over a defendant in a place where the cause of action arose, and finally the interest of the state in being able to afford adequate protection of its laws to its citizens and others within its jurisdiction." *Compania Maritima del Nervion v. Amerop Commodities Corp.*, 237 F. Supp. 73, 77 (E.D.La. 1964).

Considerations of due process do not weigh heavily against Appellants herein; they militate strongly in favor of Appellees.

Appellees submits that an analysis of the facts before the Court and the quality and nature of the transaction involved reveals that the requisite minimal contacts with the State of Michigan are such that the exercise of limited personal jurisdiction over these non-resident appellants comports with notions of fair play and substantial justice. Appellees believe that these conclusions are sufficiently patent to warrant an order dismissing the appeal or affirming the order appealed from.

B. The exercise of judicial jurisdiction over appellants herein does not result in an unreasonable and oppressive burden on interstate commerce.

Although not argued in their brief on the motions to quash before the trial court, Appellants did, in oral argument, mention burden on interstate commerce and the trial court commented upon it in his opinion. Subsequently, Appellants have briefed and argued this point in support of their position more expansively. The issue, of course, is not whether the jurisdiction of the Michigan court is a burden on commerce. Almost any litigation is burdensome. The question, instead, is whether the limited exercise of jurisdiction here sought is so unfair that it is an unreasonable and oppressive burden on interstate commerce.

Canadian Pacific R.R. v. Sullivan, 126 F.2d 433, 438 (1st Cir. 1942). The question is to be viewed in light of the following facts:

1. The tortious consequences upon which jurisdiction is based are injuries to Michigan residents.

2. The injuries arise out of the negligent handling of Appellees' products, Michigan commerce, shipped by Appellees and transported by Appellants in the ordinary course of their business for profit.

3. The carriage of Appellees' shipment was, for Adkins at least, part of a general contemporary participation in the flow of commerce to and from Michigan.

4. Appellant Tennessee Cartage was the agent of Appellant Adkins.

5. The asserted jurisdiction is carefully limited to a cause of action arising out of the transaction which resulted in consequences in Michigan.

Appellants rely principally upon *Davis v. Farmers' Co-op Equity Co.*, 262 U.S. 312 (1923). The *Davis* case in turn involved a statutory authorization of general, unlimited jurisdiction:

> "It is asserted, whatever the nature of the cause of action, wherever it may have arisen, and although the plaintiff is not, and never has been a resident of the state." 262 U.S. at 315.

Davis was distinguished and "confined narrowly within the bounds of its own facts" in *International Milling Co. v. Columbia Transp. Co.*, 292 U.S. 511 (1934). Moreover, it was decided at a much earlier stage in the development of our national economy. It is, accordingly, factually distinguished and based upon circumstances prevalent at a much earlier stage in our history.

Appellants also rely, on page 19 of the Jurisdictional Statement, upon certain defamation cases in which the courts were balancing considerations of freedom of speech and press with considerations of due process. They urge

that while the due process clause is concerned primarily with fairness to the individual, the commerce clause is designed to facilitate and assist the development and functioning of transportation and business activity generally in our country. Thus, they pose the limited jurisdiction sought in this case as a threat to the national economy.

The argument ignores the fundamental purpose and nature of the commerce clause. The clause was not included in the Constitution for the purpose of protecting or indeed treating specially the limited number of persons and entities engaged for profit in the transportation of interstate commerce. It was, in fact, intended to shield from oppressive and unreasonable burden the general public involved both as persons and businesses shipping such commerce in the course of their business and persons and businesses receiving and consuming such commerce. Thus, it would appear manifest that the determination of whether the jurisdiction sought in this case is an unreasonable and oppressive burden on interstate commerce must be made in view of the rights and privileges of the public at large, including the Appellees.

In this context, Appellants' argument becomes an effort to use the commerce clause as a shield for themselves against a claim by persons for whom the protection of commerce clause was intended. It is simply not an unreasonable burden or oppression on interstate commerce to uphold the jurisdiction sought in this case. Rather, the attendant responsibility of answering for wrongs committed in the course of conducting business under the privilege of the commerce clause upholds the validity of the jurisdiction.

It is no answer to assert that the inconvenience of defending the suit in the Michigan forum will cause disruption of interstate commerce. The modern facilities for communication, modern rules permitting the taking of testimony by deposition and the current, jet-age facilities for transportation make the inconvenience no greater than it would be if the suit were tried in Illinois or Indiana or Kentucky and only insignificantly greater than it would be if the suit were tried in Tennessee. In fact, there has been no showing on the part of Adkins, at least, that its prin-

cipal witnesses would not be closer to Michigan than to Tennessee.

Appellants argue that they were helplessly required to carry the Michigan commerce in question. This argument does not admit the fact that they were actively engaged in soliciting the transportation of commerce to and from Michigan. It does not recognize that they could have taken steps to limit the scope of their responsibility, although these would have undoubtedly limited the profitable scope of their activities. Most importantly, however, the argument ignores the opposite viewpoint. Appellees, in attempting to move their commerce from Michigan to Tennessee, could choose among only a limited number of common carriers given exclusive authority to transport such commerce. In effect, Appellees were required to use the services of the Appellants or one of their few counterparts. It cannot be doubted that Appellants have actively and aggressively competed for the privilege, indeed an exclusive privilege, of carrying this lading. The jurisdiction sought requires only that they assume the coequal responsibility that accompanies this privilege.

It follows that unreasonable and oppressive burden is not demonstrated. Here again, the conclusions of the trial court, quoted by the Michigan Court of Appeals, were concise and correct.

> "The court rejects any argument that such a result will be an undue burden on interstate commerce or will offend 'traditional notions of fair play and substantial justice.' The realities of modern commercial transactions dictate that modern concepts of jurisdiction be considered for the purpose of enlightened handling of disputes arising from modern conditions and transactions. Shall we hold that there can only be fair play and justice where the law provides that all those who do business with these defendants must go to those states wherein they are doing business for adjudication of their grievances rather than to hold that the forum of justice may be the state where tortious consequences occur? To ask the question is to answer it. The court finds nothing offensive to the

concept of fair play and justice in holding that the claimant may resort to the forum where the consequences of an act occur." (Appendix B, Jurisdictional Statement).

It follows that the decision of the Michigan trial court, affirmed by the Michigan Court of Appeals and the Supreme Court of Michigan, upon both of the questions presented, was correct. Appellees urge that this Court consider its motions in view of the paramount question of the correctness of the decision below, and also in view of the heavy cost of further delay in a trial upon the merits of a negligence action based upon events occurring more than five years ago. It is respectfully submitted that the appeal should be dismissed or the order appealed from affirmed without further argument.

Respectfully submitted,

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PER CURIAM

SUPREME COURT OF THE UNITED STATES

October Term, 1968.

ADKINS TRANSFER CO., INC., ET AL. *v.* DORNBOS ET AL.

APPEAL FROM THE SUPREME COURT OF MICHIGAN.

No. 738. Decided January 13, 1969.

PER CURIAM.

The motions to dismiss are granted and the appeal is dismissed for want of a final judgment.

MR. JUSTICE BLACK and MR. JUSTICE DOUGLAS are of the opinion that the appeal should be dismissed for want of a substantial federal question.

MR. JUSTICE STEWART is of the opinion that further consideration of the question of jurisdiction should be postponed to the hearing of the case on the merits.

MR. JUSTICE FORTAS took no part in the consideration or decision of this case.